

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FAYARD MOVING AND TRANSPORTATION
CORPORATION

and

GENERAL TRUCK DRIVERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS, LOCAL NO.
991, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,
AFL--CIO

Case ⁵15-CA-11221 *and*

GENERAL TRUCK DRIVERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS, LOCAL NO.
270, AFFILIATED WITH INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,
AFL--CIO

15-CA-11290

Is June 27, 1991
DECISION AND ORDER

By Members Devaney, Orvatt, and Raudabaugh
Upon a charge filed by Local 991, on May 1, 1990, the General Counsel of the National Labor Relations Board issued a complaint on June 7, 1990, against Fayard Moving and Transportation Corporation. Upon a charge filed by Local 270, on July 25, 1990, and an amended charge filed by the same Union on August 29, 1990, the General Counsel issued an order consolidating cases, and a consolidated complaint on September 4, 1990, against Fayard Moving and Transportation Corporation, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On October 17, 1990, the Respondent filed an answer, admitting in part and denying in part the allegations of the consolidated complaint.

On March 22, 1991, the Respondent withdrew its answer to the consolidated complaint. On April 1, 1991, the General Counsel by counsel filed a Motion for Summary Judgment and a memorandum in support, with exhibits attached.

On April 3, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board." Although on October 17, 1990, the Respondent filed an answer to the complaint as required by the Board's Rules, on March 22, 1991, it withdrew its answer to the complaint.

As there is no outstanding answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

Fayard Moving and Transportation Corporation, the Respondent, a Mississippi corporation with its principal office and place of business in Gulfport, Mississippi, has been engaged in the interstate transportation of commodities and freight by truck. During the 12-month period ending April 30, 1990, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$50,000 for the transportation of freight and commodities from the States of Mississippi and Louisiana directly to points outside the States of Mississippi and Louisiana. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

The Alleged Unfair Labor Practices

A. Representation

Since about 1968, the Unions have been the designated, and have been recognized by Respondent Fayard Moving and Transportation Corporation as the exclusive, joint collective-bargaining representative of the employees in the following unit:

All local and long distance freight and furniture drivers, packers, loaders and unloaders, warehousemen, truck helpers and mechanics employed by the Respondent and working at New Orleans, Louisiana and Gulfport, Mississippi; excluding all other employees, including office clerical, supervisors, guards and watchmen as defined in the Act.

By virtue of Section 9(a) of the Act, the Unions, at all times since 1968, have been the exclusive, joint representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The most recent collective-bargaining agreement between Respondent Fayard Moving and Transportation Corporation and the Unions is effective by its terms for the period October 24, 1988, to October 24, 1991.

B. Refusal to Bargain

Since about November 1, 1989, Respondent Fayard Moving and Transportation Corporation has ceased remitting to Local 991 dues deducted from the pay of unit employees working at its Gulfport, Mississippi facility pursuant to valid employee authorizations. Since about January 25, 1990, the Respondent has ceased remitting to Local 270 dues deducted from the pay of unit employees working at its New Orleans, Louisiana facility pursuant to valid employee authorizations. Since about November 1, 1989, the Respondent has ceased making contributions to the Teamsters Joint Council #83 of Virginia Health and Welfare Fund on behalf of employees of the Respondent employed in the unit.

The conduct and acts described above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for collective bargaining. The Respondent engaged in this conduct without prior notice to the Unions and without having afforded the Unions an opportunity to negotiate and bargain as the exclusive representatives of the Respondent's employees with respect to such acts and conduct.

We find that by its acts and conduct described above, and by each of these acts, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representatives of its employees, and the Respondent has thereby been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By ceasing to remit to Local 991 dues deducted from the pay of unit employees working at its Gulfport, Mississippi facility pursuant to valid employee authorizations, by ceasing to remit to Local 270 dues deducted from the pay of employees working at its New Orleans, Louisiana facility pursuant to valid employee authorizations, and by ceasing to make contributions to the Teamsters Joint Council #83 of Virginia Health and Welfare Fund on behalf of employees of the Respondent employed in the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent violated Section 8(a)(5) of the Act by failing to make health and welfare fund contributions, without bargaining with the Unions, and by failing to remit dues deducted from the pay of unit employees pursuant to valid employees authorizations. We shall order the Respondent to make the health and welfare contributions that it owes to the appropriate fund ¹ and to remit to the Unions the dues deducted from the pay of unit employees pursuant to valid employee authorizations. We shall also order the Respondent to make the unit employees whole for any losses they may have suffered as a result of its failure to make the health and welfare contributions, Kraft Plumbing & Heating, 252 NLRB 891 (1980). All payments to

¹ We leave to the compliance stage the question whether the Respondent must pay any additional amounts into the funds in order to satisfy this "make-whole" remedy. Merryweather Optical Co., 240 NLRB 1213 (1979).

the Union and the employees shall be made with interest as provided in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Fayard Moving and Transportation Corporation, Gulfport, Mississippi, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive, joint bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

(i) Failing to make required contributions to the Teamsters Joint Council #83 of Virginia Health and Welfare Fund.

(ii) Failing to remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues deducted from the pay of unit employees working at its Gulfport, Mississippi facility, pursuant to valid employee authorizations.

(iii) Failing to remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues

deducted from the pay of unit employees working at its New Orleans, Louisiana facility, pursuant to valid employee authorizations.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Make the required contributions to Teamsters Joint Council #83 of Virginia Health and Welfare Fund.

(b) Remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues, with interest, deducted from the pay of unit employees at the Respondent's Gulfport, Mississippi facility in the manner set forth in the remedy section of this decision.

(c) Remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues, with interest, deducted from the pay of unit employees at the Respondent's New Orleans, Louisiana facility in the manner set forth in the remedy section of this decision.

(d) Make whole the unit employees for any loss of benefits they may have suffered from the Respondent's failure to transmit health and welfare fund contributions in the manner set forth in the remedy section of this decision.

The appropriate unit is:

All local and long distance freight and furniture drivers, packers, loaders and unloaders, warehousemen, truck helpers and mechanics employed

by the Respondent and working at New Orleans, Louisiana and Gulfport, Mississippi; excluding all other employees, including office clerical, supervisors, guards and watchmen as defined in the Act.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facilities in New Orleans, Louisiana and Gulfport, Mississippi, copies of the attached notice marked "'Appendix.'"² Copies of the notice on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

June 27, 1991

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO as the exclusive, joint bargaining representative of the employees in the appropriate unit by unilaterally changing the wages, hours, and other terms and conditions of employment by:

Failing to make required contributions to the Teamsters Joint Council #83 of Virginia Health and Welfare Fund.

Failing to remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues deducted from the pay of unit employees working at our Gulfport, Mississippi facility, pursuant to valid employee authorizations.

Failing to remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues deducted from the pay of unit employees working at our New Orleans, Louisiana facility, pursuant to valid employee authorizations.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 991, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues, with interest, deducted from the pay of unit employees working at our Gulfport, Mississippi facility, pursuant to valid employee authorizations.

WE WILL remit to General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local No. 270, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO dues, with interest, deducted from the pay of unit employees working at our New Orleans, Louisiana facility, pursuant to valid employee authorizations.

WE WILL make whole our employees in the unit by making all required contributions to the Teamsters Joint Council #83 of Virginia Health and Welfare Fund that have not been been paid, and by reimbursing our employees in

the unit for any expenses, plus interest, ensuing from our failure to make the required payments. The appropriate unit is:

All local and long distance freight and furniture drivers, packers, loaders and unloaders, warehousemen, truck helpers and mechanics employed by us and working at New Orleans, Louisiana and Gulfport, Mississippi; excluding all other employees, including office clerical, supervisors, guards and watchmen as defined in the Act.

FAYARD MOVING AND TRANSPORTATION
CORPORATION

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112-3723, Telephone 504--589--6389.